Supreme Court, U.S.
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No.

In The
Supreme Court of the United States

Tao Wang, M.D.

Petitioner

vs.

William Beaumont
Hospital

Respondent

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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62 pp

Questions Presented for Review

Introduction:

Appellant is a law abiding U.S. citizen and a taxpayer for more than 15 years. Appellant had been an experienced physician in a prestigious teaching hospital in Beijing, China for more than ten years. Appellant is an American trained medical scientist. He was trained and worked in Mayo Clinic and the Cleveland Clinic and then became an independent investigator in cardiology research. As a leading author, appellant has many papers published and is recognized as a regular member of prestigious American medical societies. Appellant had been the faculty member for five years while applying the resident position in the same Department in Beaumont Hospital. It was said that appellant was not as qualified as medical students just graduated from medical schools in other countries. There is numerous circumstantial and direct evidence that indicates the rejection was premeditated, and based on age and national origin discrimination. Ignoring the evidence, The district judge sided with the employer and dismissed the case. Many who know the case were stunned and asked "How Beaumont can get away with it?!"

1.There is direct evidence (some of them were in writing) of unlawful discrimination, whether the direct evidence alone is sufficient to let this case go to jury trial?

2. Whether a showing of pretext is sufficient following Defendant's articulation of a legitimate reason for the employment action once the prima facie case has been established? Is the direct proof of illegal intent of the discriminatory employer necessary?

3. Whether the direct and circumstantial evidence combined compels a Jury trial in this case?

Parties

The parties to the proceeding in the United States Court of Appeals for the Sixth Circuit are the same as the parties to this proceeding: petitioner Tao Wang, M.D. and respondents William Beaumont Hospital.

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PETITION FOR WRIT OF CERTIORARI

Tao Wang, respectfully petition for a writ of certiorari to reverse the judgements of the United States Court of Appeals for the Sixth Circuit and the United States District Court for the Eastern District of Michigan Southern Division.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is unpublished. (Appendix II, b1). The Sixth circuit's order denying the petition for rehearing is unpublished. (Appendix II, b5)

The order of the United States District Court for the Eastern District of Michigan Southern Division is unpublished. (Appendix I, a1)

JURISDICTION

The opinion of the United States Court of Appeals for the Sixth Circuit was filed on FEB 22, 2000. The court of Appeals denied a timely petition for rehearing on April 10, 2000.

The opinion of the United States District court for the Eastern District of Michigan Southern Division was filed on DEC 14, 1999.

The jurisdiction of this case is based on federal question pursuant to 42 U.S.C. § 2000e(2)(3) and (5) (Title VII), 42

U.S.C.§1981, 29 U.S.C. §621 et seq., and based on supplemental jurisdiction pursuant to 28 U.S.C.§1367(a).

THE STATEMENT OF FACTS:

I. APPELLANT'S BACKGROUND.

A. Appellant is an Experienced Physician and an American Trained Medical Research Sientist:

Appellant was born Beijing, China in 1943. He graduated from Nanjing Railway Medical College with a medical degree in 1967. He then conducted family practice from 1967-1973 before entering the internal medicine residency in Beijing Railway General Hospital, a teaching hospital with more than 1,000 beds. He completed more than three years residency training in internal medicine, and worked as an internist through *every division* in the Department of Internal Medicine. The residency training and clinical experiences obtained as an internist were similar to that in the United States, but exposed him to a much greater number of patients and variety of diseases. Appellant finished his cardiology fellowship and was promoted to *an attending physician* in cardiology in 1982. Appellant worked in emergency room for one and half years and practiced in outpatient clinics from time to time during that period. Besides his clinical duty, appellant had teaching responsibility for residents from medical school of Beijing University (so called Harvard-Yingjing University). Appellant was so successful that he was on the physician team for highest ranking government officials and visiting high ranking foreign government delegates before coming to the U.S.

After undergoing an extensive selection process held by the Chinese Ministry of Higher Education, appellant was selected as one of a few exchange scholars from thousands of applicants to come here for medical research. Appellant was accepted and trained in world-renowned *Mayo Clinic and the Cleveland Clinic*. In Mayo clinic, appellant worked on the most advanced CT in the world at the time for evaluating regional blood flow in the cardiac muscle.

> "The technique developed by Drs. Wang and Ritman are receiving widespread usage by physicians and scientists utilizing other fast x-ray CT devices, such as that produced by the Imatron Company. Drs. Wang and Ritman's method for the validation of regional blood flow is even being utilized now in Nuclear Medicine to validate studies utilizing positron emission tomography." (*Dr. Hoffman's letter*).

Appellant then became a senior research fellow in the Cleveland Clinic to study coronary heart disease from 1987-1989. Until that time, he had planned to return China at the conclusion of the two-year fellowship. However, following the Tiananmen Square Massacre, Appellant decided to remain in the US.

As a research instructor and research associate scientist in University of New York at Buffalo and the University of Wisconsin at Madison, appellant and his colleagues had developed an advanced technique that combined physiological experiment and molecular biology to investigate the cure for coronary artery disease. As a leading author, numerous papers generated from appellant's studies were published in peer-reviewed Journals and presented in conferences around the world. Appellant was recognized as

the regular member of the prestigious American Physiological Society and the American Heart Association.

B. Appellant's Employment with and Layoff from Defendant Hospital.

During the interviews (1991-1992), appellant emphasized the importance of the job security to him because of his age. At the time, Dr. O'Neill (Director, Division of Cardiology, Department of Internal Medicine, Beaumont) assured appellant "I am not going to ask you to bring your family here and let you go, unless you wanted to go someplace else." "As long as I am here, your job is secured..." Dr. O'Neill also promised that appellant would never have to worry about the research funding.

With little technical support and very limited funding, appellant had brought a storage-room like lab into a full functioning cardiology research lab. He had established two very complicated projects, and worked on the third. In a regular lab, each project with such complexity needed at least 2-3 researcher's devotion. He taught cardiac research to residents and cardiology fellows. Appellants was also a member of the Animal Care Committee, one of the three committees which oversaw the entire research activities in Beaumont.

William O'Neill, M.D. the Director of WBH's Division of Cardiology and appellant's supervisor for five years, described appellant as a ***"phenomenal asset"*** to the Cardiology research, and Appellant was ***"extremely hard worker, extremely dedicated."*** and "***He was very hard working and was very reliable***" (Dr. O'Neill's deposition P. 28, 63 and Ex 4).

October 9, 1996 appellant was informed that his position was terminated due to a cutoff of research funding. After the termination, appellant's technician obtained full support to remain in Beaumont.

In sharp contrast, appellant was basically ordered to go in one and a half months This discriminatory treatment really bothered appellant, and he had to file an internal grievance. As a result, defendant decided to extend appellant's employment until June 14, 1997, and *promised to find a comparable position inside Beaumont for appellant.* It was never realized. Furthermore, the appellant was *retaliated* because of the filing of the internal grievance.

II. The premeditated exclusion of appellant was the combination of retaliation with age and national origin discrimination.

A. There was no Fair Selection in 97 Internal Medicine Program.

1. Absence of Writing Policies in Internal Medicine Selection Process .

There is nothing in writing regarding the pre-requisites for the consideration of applicants (LR Dep p. 9). There is nothing in writing concerning the weighing of the different criteria in the consideration of applicants (LR Dep P37, TW Dep P 19-20). There is nothing in writing regarding the criteria to be used for ranking the candidates (LR Dep P 37). The ranking scales of the interviewer were the results of the subjectivity and certain under table exchanges. The following was an example of subjectivity at its zenith: (from Dr. Shoichet's explanation (Dr. Shoichet was the director of the internal

medicine program. One of the three decision maker in appellant's application) about a candidate he liked, it was more mystical than reasoned:

> "Two things made a difference to me. One was I think the — just the Gestalt. Something clicked about the interview... It's one of those again Gestalt sort of things, ooh, where did this guy come from, thank you Lord for dropping this into my lap." (SS Dep P. 81).

It was amazing that these ***subjectivity*** *was statistically processed and expressed as* <u>*Mean ± SD (mean and standard deviation).*</u>

<u>2. Appellant's Application was Premeditated Rejected</u>, the following were the facts:

1) Dr. Rocher's memo (Dr. Rocher was the Chairman of the Department of Internal Medicine, who was responsible for the premeditated rejections of appellant in *both* resident and cardiology fellowship programs) dated Dec. 10, 1996 (interview was on 21th, January, 1997.) In the memo, Dr. Rocher expressed his negative view toward appellant's application. He did not forget to give a copy to Dr. Shoichet (the director of the internal medicine program, one of the interviewer in appellant's interview). *Dr. Rocher's memo set the tone for the rejection.* "Dr. Rocher makes the decisions (about whom would be accepted.)" (Dr. Shoichet told appellant during the interview).

2). Dr. Shoichet had told Dr. O'Neill that it was unlikely that appellant would be accepted into the program given "his low scores." The conversation happened in early January before appellant was interviewed (Dr. O'Neill's Deposition P. 20).

3). Dr. Gorden (Chief, gastroenterology, Department of Internal Medicine, Beaumont Hospital) called appellant in Dec., 1996 and told him that "unfortunately, they have already *made up* their mind that they are not going to take you (into their program)."

4) Mr. Thomas Thompson (then medical associate director, now vice-president of Beaumont) wrote a memo to Dr. Reid (medical director at the time) on November 16 (more than two months before the interview) after appellant's internal grievance. The memo said appellant hoped

> "to be accepted into a residency program in Internal Medicine, preferably but *not likely* at Beaumont..." (Ex 8)

In the end of the memo, Mr. Thompson wrote "Mr. Sutherland (the general counsel of Beaumont) is preparing a release for Dr. Wang to sign in order to receive the seven months' *separation pay.*"

3. The selection process was a fraud.

> "in effect, Claimant seeks **special treatment** due to his prior service as a researcher." "It was not enough, in claimant's mind, that Beaumont extended his tenure and even granted him an interview despite his extremely low rating" (Beaumont Statement, emphases were added by appellant.)

There was no need for appellant to "seek a special treatment", Beaumont policy indicated that

> "Reassigned employees will be given placement priority

over other candidates for positions for which they qualify" (Beaumont Reassignment Guidelines)

In addition, both Dr. Rocher and Dr. O'Neill told appellant that they felt "the Department owe you something..." and promised appellant a smooth transition from research to clinical work. The high ranking Beaumont official had promised appellant that they would find a comparable job for him inside Beaumont. No special treatments was sought. There were only the broken rule and promises.

As the consequence of the discrimination, appellant's medical career was destroyed and he almost lost his life, it was amazing that the authors of the Beaumont Statement wanted *appreciation* from appellant. Frankly, an interview "show" had brought no benefit to appellant at all. It was more like the predators enjoyed playing with their prey.

The Beaumont statement indicated that before the interview there was a "extremely low rating" (interview rating before the interview?!) already. Dr. Rocher described the interview as *"do Dr. O'Neill a favor"*, Beaumont said that the interview was a *"courtesy interview."* (Beaumont Statement). Everything indicated that the interview was not real, it was just a show to legalize the premeditated exclusion.

The selection process of 97 program was a fraud, *full of special treatments*. "Katherine Nori" was a good example. Beaumont had admitted that Dr. Catherine Nori, the daughter of Dr. John Nori (Beaumont physician), was enrolled into the 97 residency program of internal medicine without gone through any selection process.

Every applicant's file had the name, university and graduate

year on the cover page. Dr. Catherine Nori had nothing on the front page of her file, only "APPLICATIONS, ETC." Dr. Nori did not appear on any list of the enrollment. Dr. Rocher and his companies seemed to want to hide something. They always claimed that they had 16-18 residents recruited into 97 program. The actual number was 22. Catherine Nori was one of these differences.

Dr. Rocher had made fierce efforts to cover up the truth of Dr. Nori's enrollment. In Dr. Rocher's deposition, he gave a lengthy explanation of Dr. Nori's enrollment (from page 96-103).

Dr. Rocher and his companies tried to describe Dr. Nori as a **96 transition year resident**, and even used her "clinical experiences" to discredit appellant's selective rotation, Dr. Rocher said *she was a "licensed physician" before July, 1997*. However, there was no record of Dr. Nori in any 96 program, and a "transition" before July 1997 was obviously a lie.

The record show that Dr. Nori was a 97 medical graduate from Wayne State University, indicated clearly in her CV under the item "EDUCATION":

> 8/93 - 6/97 Wayne State University
> School of Medicine
> Detroit, Michigan
> Doctor of Medicine

In her application form, it was clearly typed that ***"1998 diagnostic Radiology Residency to include 1997 transitional year residency to begin training, July 1997.***

When confronted with the facts, Dr. Rocher changed the date of Dr. Nori's recruitment. Dr. Rocher said that she may be enrolled into the program **several months after July, 1997.** They could enroll anybody after July 1997. The question were a. How an applicant can be enrolled into the 97 program after the selection process was finished? b. Did Dr. Rocher save a 97 resident slot for Catherine Nori over several months? How many slots the 97 internal medicine program were given, and how many were assigned under the table? c. If the slot was not saved for Catherine Nori,, where did Beaumont get an extra slot for Dr . Nori,? What was the excuse they used for extra federal funding? No matter what the answers were, *this was a typical special treatment.*

The 97 program had recruited five foreign medical graduates. *At least three of them* were the relatives or friend of then internal medicine residents. These examples were enough to demonstrate that residency program of internal medicine (at least the 97 program) was a *corrupted program.*

In summary: The evidence indicated that appellant was excluded from consideration before the interview. The interview was a show (a show that Dr. Rocher even did not bother to show up but gave a very low rating to appellant anyway) to justify the exclusion of appellant. Pre-rejected, however, granted a **fake interview** was not a "courtesy" or a "break" (rather a cruelty) to appellant, *it was part of a complex manoeuver* covering up the discrimination.

III. Pretexts Used by Beaumont

A. The Official Reasons for Appellant's Rejection

Dr. Rocher told appellant that his rejection was based on; 1) appellant had not got good enough USMLE scores; 2)

appellant had not practiced clinical work for too long, and *the clincal experiences got from China were less favorable because the experiences were obtained in "a less sophisticated environment."*

B. Pretext 1. Beaumont Use the USMLE as a Major Excuse in Rejecting Appellant's Application.

1. Some of the candidates accepted into the program had lower step II (clinical Sciences) scores. Others did not report Step II score, a likely sign of failure. One accepted candidate did **fail** step II. .

Dr. Rocher and his companies had made appellant's USMLE scores a major excuse in rejecting his application. Dr. Shoichet told Dr. O'Neill "it was probably unlikely that (appellant to be accepted) given his low scores." (P19, Dr. O'Neill's deposition.) Dr. Rocher told Dr. Weintraub (associate medical director in Beaumont) and appellant that the "low score" was the major reason to reject him.

USMLE were medical board exams. Appellant's passing scores of 178 on step I and 188 on step II. Step I test basic sciences. Typically, an applicant is never better prepared to take step I than while he or she is still in medical school because that is the most intensive period of study of the basic sciences (LR Dep P.81). Step II meaure clinical sciences (LR Dep P.88) which is more directly relevant for a residency program. because a residency program involves the application of clinical knowledge and skills.

Dr. Rocher admitted that the scores were used as a screen device **only** for the "international trained" medical graduates (I.R deposition). The following evidence will reveal even

this confession was not completely true. The practice of Beaumont was against the law. Section 102 of the 1992 Federal Health Professions Education Extension Amendments [PL 102-408].

The following example showed how far Dr. Rocher and his companies would go to twist the facts and to apply double standards in the selection process.

Susan Hart-Cavallo, whose STEP II score was **163**, *failed to meet the minimal requirement set by the USMLE*, therefore *did not meet the minimal qualification of a resident*. However, Susan Hart-Cavallo was selected into the 97 program of Internal Medicine.

Dr. Rocher said that "the concern might be her poor board scores, superficially part two. We noted *(how?)* that She was ill on the day that she took the exam, and couldn't actually complete the exam. And that score was inconsistent with her first part score." (Dr. Rocher's Deposition page 164, italic was added by appellant.)

There are several questions: First, was everybody's condition in his or her exam's day noted and considered by Dr. Rocher and his companies? Second, Dr. Rocher and Dr. Shoichet had given different excuses for the failure of Susan Hart-Cavallo in USMLE (see the excuses given by Dr. Shoichet below). Who lied? Third, part one and part two are very different tests. For most students, the two tests are taken two years apart. Was there any way using one score to predict the other?

Dr. Shoichet explained that Susan Hart-Cavello's failure was "related to *childbirth and some other issues*," and "I realize

that the reason we selected her is because *she was honest enough to tell us what her step II was . . .* " (Deposition of Dr. Shoichet, Page 85). How kind and compassionate he was. Dr. Shoichet saw the valuable human quality through a failed score. In sharp contrast, Dr. Shoichet said: "There is nothing that Dr. Wang could say or do that could change his scores." "They are there. And he couldn't have explained them away." (Dr. Shoichet's deposition, Page 54-55).

Drs. Nasser Bayati and Veslav Stecevic had lower Step II score than appellant did. Both of them were enrolled into the 97 program. *To these foreign medical graduates, scores were not the only standard anymore.*

***Sixteen percent** of all of the applicants who had been interviewed and rated 6.0 or above had no Step II sore. (According to Dr. Shoichet's theory, significant faction of them failed their exams). **One-third** of the 97 residents of Internal Medicine in Beaumont had no Step II score.* However, all of these resident had been doing "very well." *This fact indicated that Dr. Rocher and his companies never believed that the USMLE bears any weight in predicting the performance of a resident physician, they only used the USMLE score as a convenient excuse to get rid of the applicant whom they did not like.*

2. "Used my USMLE score as the only standard to judge someone who was a faculty member and served the Department for five years" is unjustified (Appellant's memo to Dr. Rocher, June 24, 1997), it was like to judge a medical graduate by his MCAT (Medical College Admission Test) scores.

The USMLE were for Medical Students. In 1998, appellant

had a conversation with Tim A. Fischell, M.D. Professor of Medicine, Michigan State University. When they talked about the USMLE appellant had passed, Dr. Fischell said: "It must have been tough, *I do not believe that I can pass them now . . .*" *Appellant doubts that Dr. Rocher and his companies would have had courage to take the USMLE and pass them if they were in appellant's situation.*

C. Pretext 2. "Appellant's Clinical Experiences Obtained from China are less Favorable".

1. One of the the strongest point of appellant's medical career was the clinical experiences that distinguish the appellant from the other applicants.

Unlike appellant, none of the 22 Candidates accepted into 97 internal medicine residency program, had ever before completed a internal medicine residency program or actually practiced medicine as a physician.

2.. The comment "Clinical Experiences obtained from China was less favorable" was closely associated with the discrimination of appellant's national origin.

In Dr. Rocher's mind, the medical knowledge and skills of an experienced Chinese physician and a American trained medical scientist, were not as qualified as medical students who just graduated from medical school. Even was not as qualified as those foreign medical graduates, who just flew to this country (from Iran, Lithuania etc.) a few months before the residents selection, and were probably still in "Culture Shock". Anyone with common sense knows this is ridiculous.

3. Evidence of National Origin Discrimination in Beaumont Statement:

> "Second, it is virtually impossible for Beaumont to scrutinize the multitude of medical schools abroad and verify their legitimacy. For example, Beaumont does not have the capacity to substantiate the teaching methods of course material of *such schools as the Nanjing Railway Medical College*, the school from which the Claimant graduated." (Beaumont statement page 4).

Although Dr. Rocher and his companies admitted that they knew nothing about foreign medical education in any country, appellant's medical college was *singled out to be insulted.*

> "Third, although his resume listed a number of well-respected institutions, none of his work at those institutions involved the practice of clinical medicine, which is what the IMR program is all about. Fourth, Claimant conducted his heart research in an animal lab, and he had not seen a human patient in twelve years, and, **even then, that was in China** " (Beaumont Statement Page 4, emphases were added by appellant).

Answers to the Beaumont Statement:

First, the foreign medical graduates who are allowed to be certified by the ECFMG (Educational Committee of Foreign Medical Graduates) must graduate from the medical schools credited by the WHO (World Health Organization), the fact is well known in the American medical society. After the certification, *foreign physician should be judged individually based on their academic merit not by their national origin.*

Second, Chinese medical graduates have been honored in the U.S. in many ways, appellant was accepted into *Mayo Clinic and then the Cleveland Clinic* was an example. Some of appellant's colleagues, with the similar background and experiences were waved residents training by the Board of Internal Medicine under *the rule of special consideration.* Chinese medical graduates are the largest ethnic group working in the medical research laboratory and bedside in many medical institutes in the U.S. The statement **"even then, that was in China"** or **"Stay in research or go back to China."** was very disturbing when it appeared in the official documents. These comments sound much more like racial slurs against immigrants.

Third, **none** of the applicants (including the medical graduates in the U.S.) was "involved the practice of clinical medicine" and "functioning at Beaumont or anywhere else as a medical doctor (licensed physician)." (Beaumont Statement). Residency is the training step necessary for licensing.

4. Evidence of National Origin Discrimination in Dr. Shoichet's Deposition

In July, 1996, appellant was advised by Dr. Jay Bernstein (the director of the research institute, who had been associated with Beaumont for thirty years at the time and a friend of Dr. Shoichet) *"there are two obstacles against you, one is your age, the other is your nationality* . . . " he said that the "Chinese (physicians) think things differently, like herb medicine they used . . . " From Dr. Shoichet's deposition appellant knew where Dr. Bernstein's idea was from, Dr. Shoichet testified: (Dr. Shoichet's deposition page 6)

"And the biggest thing that I learned was in a morning report that was given by one of my former Chief resident, who was actually from Taiwan, *but where he discussed uses of what we would probably call now alternative medicine in the United states in terms of Chinese customs and herb therapies and that. And I found that fascinating.*"

The implication of his comment was clear, especially when the statement was the answer of a question about the Chinese Medical Education.

His comments were really irrational to appellant. First, a physician from Taiwan was not a good representative of the Medical Education in the Peoples Republic of China. Second, a Chinese physician had discussed the traditional Chinese medicine was a very natural thing to do. Some Chinese believe the traditional medicine just like some American believe the alternative medicine, it has nothing to do with the mainstream medical education. *Trying to paint some "alternative" color on Chinese medical graduates was a strong evidence of the discrimination.*

5. The "residency" and "Medical student rotation" are two totally different stages of medical education. Dr. Rocher and his companies tried very hard to mislead people by mixing up residency and student rotation.

Medical students do clinical rotation in their third and forth year of the medical school before they complete their clinical courses. It is mainly **observational**. The purpose is to reinforce the medical knowledge which they have learned from the classes. Residency is the training program designed to give the *basic clinical skill* to the physicians, the necessary

step for licensing.

Even in the residency program, most first year residents have no clinical experiences at all. *There is little room for the residents to make their own medical decision without supervision.* However, Dr. Rocher and his companies asked the students

> " to be the *first person* to see the patient"
> "to take the initial history, and do the initial physical examination, and to write down the set of orders that will be needed on admission." (Dr. Shoichet deposition page 33)

They also said that the medical students would spend 85% of their time individually with the patient without supervising physician "making the decision." (Dr. Rocher's Deposition page 135).

It is a shocking story. Dr. Rocher and his companies give the men's job to the boys. If they really let the medical students *(Medical students had not even finished their clinical courses, did not have adequate medical knowledge and skill to take care of patients, and of course they were not licensed physicians)* do the resident's job, and kept them in the hospital for 90 hours per week, Beaumont had committed some illegal activity. **To let the medical students handling the seriously ill patient initially and independently was a crime**. It might waste the precious time which was a matter of life or death to the patient.

D. Pretext 3. The Mystery of "Atrophy" of One's Medical Skill and Knowledge When Lack of Recent Patient Contact

Dr. Rocher and his companies had made up a horrified story that a physician, who had absence from clinical work for a period of time, would lose his medical knowledge and clinical skill completely. In addition, the loss was not recoverable and it even prevents the physician to learn.

I. Dr. Rocher and his companies had admitted that there was no any data or publications in support of their story and there was no substantial evidence that any of their residents with the "absence from direct patient care" had any such complete and non-recoverable loss of medical knowledge and skills..

All the attacks to the physicians who had been classified as "absence to the patients contact" did expose the prejudice and bias of Dr. Rocher and his companies. *None of the attacks were related to the "deterioration of medical knowledge and skill".*

The attacks were focused on "foreign accent" (Dr. Wilkinson's deposition, page 48), "Attitude problems" (Dr. Rocher's deposition, page 93), "tunnel vision" and *a cardiology fellow was described as "don't know any medicine anymore"* (Dr. Shoichet deposition, page 67, he went too far on this one again, Dr. Shoichet had a tendency to lie with enthusiasm and get carried away by it.) In their opinion, medical *experiences beyond Internal Medicine was not medicine any more*. Dr. Rocher and his companies tried to convince people that medical research is not medicine, cardiology is not medicine, only internal medicine is medicine. What a "tunnel vision"?!

Deep in their mind, they did not believe what they claimed. Dr. Wilkinson told appellant "*you know too much, you make*

everybody around you feel uncomfortable." His concern was echoed by Dr. Rocher in his deposition (page 94).

2. Medical Research is the vital part of the modern medicine

Medical research is a vital part of Medicine. Research always pioneers the medicine. It is the most dynamic and leading force of American medicine. Without medical research, there is no modern medicine.

The defense had attacked the medical research indifferently:

> "third, although his resume listed a number of well respected institutions, none of his work at those institutions involved the practice of clinical medicine..." (Beaumont Statement)
> "Plaintiff was not hired to work on human patients, but rather to perform research on animals. Indeed, all of plaintiff's work in the United states involved animals-dogs, rats, rabbits, and pigs." (Beaumont Brief).

One of the lawyers hired by Beaumont even *insulted* appellant openly in deposition

> "And in fact **what you were doing was working on dogs as a very lowly paid medical investigator** ..."

The comments were not only the reflection of ignorance and arrogance of the defense on medical research but also a part of the strategy to discredit every achievement of appellant.

3. "*Knowing medicine is like riding bicycle, once you have learned it, you never forget...*" (Colonel Potter in M.A.S.H.)

Appellant had done a selective clinical rotation in the Department of Internal Medicine in Beaumont Hospital in **1996**. appellant's clinical knowledge and skills in gastroenterology and hepatology (a major subdivision of internal medicine) were refreshed immediately. He functioned *as a second year resident* comfortably with patients and his colleagues. Before the end of the session, appellant had given a lecture of " Toxic Hepatitis Induced by Medications" in the division morning conference. The chief of the division, Dr. Gorden, describe appellant's work during the period as

> *"I recently had the opportunity to work with Dr. Wang on the Gastroenterology-Hepatology service at our institution and was impressed with his integrity, scholarship and humanity. He worked extremely well with both patients and his colleagues. He was indeed an asset to this institution ... "*

One month rotation experience in internal medicine had moved an applicant up in the list and finally get him into the 97 program. (See SS Dep P.82-83, and P.66). Beaumont had totally **ignored** the fact that appellant had just completed his rotation in **1996** and *functioned as a second year resident.* Beaumont had repeatedly alleged that *"he had not seen a human patient in twelve years, even then, that was in China."* (Beaumont Statement, emphases were added by appellant.)

5. Was the story made by Dr. Rocher and his companies a "bad judgement"? No, it was absolutely not.

1) Since the residency is a training program, whether the candidate had "clinical experience" was never a concern in Dr. Rocher's mind The criterion set for the interviewer *did*

not even mention about the clinical experiences:

> "Each interviewer graded the applicants based on a review of academic performance in medical school, medical school attended, grade transcript, class rank, work experiences, letters of recommendation, and interview performance."(Beaumont Statement Page 4).

2) *Dr. Rocher knew clearly that the medical "student rotation" is "observational."* It could not be compared with the "clinical experiences" that residents have. Since it was "mixing apples and oranges here" (Dr. Rocher 's deposition page 103]. *Do not mention that there is significant difference in "clinical experiences" between a resident and a physician with many years practice.*

3) Dr. Rocher and his companies never considered "the absence of the direct patient care" as a disadvantage when they want to enrolled some of the foreign medical graduates into the program. The following were the examples:

a Lithuanian physician, who had no internal medicine training, traveled around Europe (each country for one year) for three years and settled as a *"Project Management Specialist"* of the "*United States Agency for International Development*" and "*Medical Advisor*" to the "*US Embassy in Lithuania*," his "absence from direct patient care" were hailed by Dr. Rocher as ***"Broad and dramatic experiences,"*** *(Dr. Rocher's deposition page 162, emphasizes were added by appellant*) Certainly, in Dr. Rocher's mind, the "Agency of International Development" and "the US Embassy in Lithuania" were **better** "medical environment" for "nursing" one's "medical knowledge and skills" than Mayo Clinic. The "embassy employee" and a "management specialist" in

Lithuania would have had **more** medical knowledge and skills than a established medical scientist in the U.S.

4) "Guideline for Proposing Candidates for Special Consideration for Admission to The Certifying Examination in Internal Medicine." gives foreign physicians:

> "who have completed three or more years of internal medicine training abroad and **eight years** of post-training experiences as full time clinician-educator or clinical investigator in internal medicine"

a special consideration, and waive the resident training requirement.

The guideline indicated that 1) the board credit the formal *internal medicine* residency training abroad. 2) the research experiences as a clinical investigator *in internal medicine* counts. 3) there is no such thing as "atrophied" and "non-recoverable" medical knowledge.

VI. The Denial of Cardiology Fellowship

Dr. William O'Neill is the director of Cardiology and has full control over the Cardiology division, which includes hiring. He is a direct subordinate of Dr. Rocher. (WO Dep Pp. 5-7). In June 1996, when there was talk that appellant's research position with Defendant would be eliminated, Dr. O'Neill informed appellant that if he was not accepted into Defendant's internal medicine residency, O'Neill would take appellant into the cardiology fellowship program. (PI Dep Pp 325-326). At the time Dr. O'Neill did attempt to recruit appellant *as a second year fellow*. There had never been discussion about the qualification of appellant working as a

cardiology fellow in the Department of Cardiology. It was out of question, appellant was a *staff member* of the Cardiology at the time.

O'Neill asked Dr. Rocher how he would feel if appellant was accepted as a cardiology fellow. Rocher informed him that *he, Rocher, would oppose it.* (LR dep P.149, WO Dep P.36). He told Dr. O'Neill "I thought Dr. Wang was a poor candidate for a direct cardiology fellowship position. That would be a bad decision" *"I 'm not sure that he (Dr. O'Neill) was thrilled to hear that,* but I don't recall any strong objection either." (Dr. Rocher's deposition, P.149-150)

Ultimately, Dr. O'Neill told appellant that although he is the head of the cardiology division, "I have my bosses," (referring to Rocher etc.), and that he could not take appellant into the fellowship without their permission. (WO Dep P. 52; Pl Dep Pp. 159, 344). **Again, the rejection of appellant into the cardiology fellowship was premeditated by Dr. Rocher.** The premeditated rejection resulted in a interview given to appellant that was *nothing short of bizarre.*

Dr. Markovitz,(the program director of the cardiology fellowship) who screened the applicants and interviewed him, considered his years of cardiology research as well as his extensive clinical background and rated him a 6.5, slightly more qualified than the cardiology fellows currently in the program. Dr. O'Neill rated Plaintiff a 5, which according to the form meant that he was comparable to the cardiology fellows currently in the program. And, *this was after O'Neill decided that he had to keep peace with his boss, Dr. Rocher, who had told O'Neill that appellant should not be given a fellowship position.* Dr. Goldstein, with an ax to grind against appellant, gave him the lowest rating possible, a "1."

Ordinarily, such radical discrepancies simply do not occur. When they do, the are discussed at the Fellowship Selection Committee Meeting. Yet, no such discussion occurred here.

In summary, it was clear that Rocher was pulling the strings behind the scenes here, influencing O'Neill, who otherwise would have taken appellant into the fellowship. Given Rocher's demonstrated discrimination against appellant, appellant clearly establishes a prime facie case respect to the cardiology fellowship as well.

V. The Tragic Nature of Appellant's Ordeal:

The tragic nature of appellant's ordeal was that he believes that in this country hard work always brings opportunities. It was why appellant had worked very hard in every position he had. It was why appellant had self-studied about 30 currently used medical school courses at his age. In five years, appellant had no vacations, no weekends, with a full time very demanding job, he had to study until midnight every night.

Appellant had applied only a resident position, a lowest training position necessary for appellant to be licensed in the U.S. In Oct 1997, appellant had no job, no career, no hope for the future. As a last stitch to save appellant's medical career, **he begged Beaumont to work as a volunteer for a training opportunity.** Appellant knew how hard that would be for himself and his family, appellant and his wife had decided to make the sacrifice. The answer from Dr. Rocher was **"Forget that you are a Doctor, find something else to do . . . "**

Dr. O'Neill had called several local hospitals in Dec., 1997,

trying to find appellant a slot for 98 residency training. In Dr. O'Neill's letter, he wrote:

> "*From my standpoint, I have been delighted with Dr. Wang's performance, I would avidly attempt to recruit him as a fellow once some internal medicine training was completed. Again I would emphasize to you that I think he is an outstanding clinical investigator, but he will require a formal training (in the U.S.) We would be delighted to provide the cardiovascular component to his education,...*"

However, the same question was asked; Dr. Wang had worked in Beaumont as a medical staff for five years, why Beaumont internal medicine did not take him? . "*That says something . . .* " Dr. Frank Chuck (St. Joseph Mercy program Director) told appellant. The directors of those programs told appellant that *they would talk with Dr. Rocher to know his opinion.*

From June 1997 to Dec 1997, appellant were under severe emotional stress. He had seriously considered suicide during that period. Dr. Rocher's call had delivered an ominous message; his retaliation would be everywhere. Appellant knew there was no way out. This was the last straw that broke the camel's back.

Appellant got the **heart attack** in Dec. 19, 1997. During the angioplasty procedure, he was bleeding a lot, and an air bubble induced by the catheter obstructed an artery in the brain and appellant got a **stroke**. There was **severe external and internal bleeding** during the episode. Appellant's hemoglobin was more than 15 g% before, it was less than 8 g% after. Appellant has had Chest pain and short breaths

frequently and irregular heart beat all the time. As consequences of the stroke, appellant was *slightly paralyzed in his left side* and *severely unbalanced.* Appellant has had **double vision** and feels *dizzy all the time.* Appellant and his family feel like trapped by a bad dream and could never wake up. It is too painful to recall what his family and he have been through in the past several years. Appellant's ordeal has been a real tragedy, which should not have happened in this country.

REASONS FOR GRANTING THE PETITION

I. THERE IS DIRECT EVIDENCE OF UNLAWFUL DISCRIMINATION SUFFICIENT TO GO TO THE JURY.

Where there is direct evidence of unlawful discrimination, there is no need to employ the presumption-based proof scheme of McDonnell-Douglas. Matras v Amoco Oil Corp, 424 Mich 675 (1986); Cline v. Roadway Express, Inc., 689 F.2d 481 (CA 4 1982). Unlawful discrimination need not be the only reason, or even the main reason, as long as it is one of the reasons that make a difference. Laugesen v Anaconda Co., 510 F.2d 307 (CA6 1975).

Here. there is direct evidence that all three decision-makers (Shoichet, Rocher, and Wilkinson) regarding Plaintiff's rejection from the IMR made comments (some of them are written in official documents) clearly reflecting bias against appellant on account of his age and national origin:

1. Dr. Wilkinson wrote in interview record:
   "We have not had good success with **older applicants** who have done advanced work in a sub-specialty. He

should stay in research or go back to China."

In addition, Wilkinson told appellant

" you would be supervised by much younger and much less experienced people, you know too much, you make Everybody around you feel uncomfortable."

2. Dr. Shoichet asked appellant:

"why would you want to change your career at your age?"

3. Dr. Shoichet wrote:

"appellant would be a risky project, like Dr. Zhong." [appellant's fellow-Chinese national, then the third year resident in the program].

4. Dr. Rocher indicated that appellant's clinical experience in China was less preferred because it had been obtained in a less sophisticated environment.

Shoichet favored a Lithuanian candidate because a Lithuanian predecessor did well. He disfavored appellant because a fellow-Chinese predecessor did not. If such pre-judgment is not the essence of discrimination, what is?

Because the low ratings given to Plaintiff by Shoichet, Rocher and Wilkinson made it impossible for appellant to be placed even in a gray area for consideration by the Residency Selection Committee, appellant establishes the requisite causative link between the discrimination and the adverse employment action.

Hence, appellant submits that, viewing the direct evidence alone in the light most favorable to him, a reasonable jury could conclude that he was a victim of unlawful discrimination under Title VII, the ADEA, and Michigan's Elliott-Larsen Civil Rights Act.

II. THE DIRECT AND CIRCUMSTANTIAL EVIDENCE COMBINED COMPELS A JURY TRIAL IN THIS CASE

If we employ the presumption-based proof scheme of McDonnell-Douglas, it must first be noted that under Title VII, a showing of pretext is sufficient following Defendant's articulation of a legitimate reason for the employment action once the prima facie case has been established. "Pretext plus" is not required, as Justice Scalia himself clearly stated in St. Mary's Honor Center v Hicks, 509 U.S. 502 (1993):

> The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons [will permit the trier of fact to infer the ultimate fact of intentional discrimination,] 4 and the Court of Appeals was correct when it noted that, **upon such rejection, '[n] o additional proof of discrimination is required.'**"[Emphasis added].

III. The Importance of This Case

1. There is wide spread age discrimination. Age discrimination is not only against "blue collar" Caucasian worker, everyone in every walk of life could be a victim. Baby boomers entering their fifties make the protection to the older worker more urgent.

There is no secret that foreign trained physicians do not have the equal opportunity in the recruitment of training program (appendix 4). However, it is stunning experiences to see an

experienced physician, an American trained scientist, a medical staff of the same Department was discriminated based on his national origin.

This case is an extreme example of the overlapped age and national origin discrimination. The discrimination was reckless and the evidence was strong. The ruling of the high court on this case will provide more protection to the most vulnerable faction of the working force.

2. The compelling evidence could not prevent the district judge from siding with the employer, and dismissed the case. The dismissal has stunned everyone who knows the case "How Beaumont could get away with it?" This case indicated that there is long way to go to prevent the jury trial becoming endangered species.

3. This is not a "Capital Case". However, the ruling of the high court is a matter of life or death to appellant.

CONCLUSION:

Appellant request that this high court review the case and gives him the justice.

Appellant

BY

Tao Wang, M.D.
923 Bridgetown
Troy, Michigan 48098
(248)879-5844

July 1, 2000

APPENDIX I

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

TAO WANG,
Plaintiff,

Case No.: 98-75357
Honorable Anna Diggs Taylor

V.

WILLIAM BEAUMONT HOSPITAL,
Defendant.

_____/

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_____/

ORDER GRANTING DEFENDANT'S SUMMARY JUDGEMENT AND DISMISSAL OF THE COMPLAINT WITH PREJUDICE

This matter having come before the Court pursuant to Defendant William Beaumont Hospital's Motion foraaa2 Summary Judgment; and Plaintiff having filed a responsive brief in opposition thereto; and oral arguments having been conducted before the Court on December 13, 1999; and the Court being otherwise fully advised in the premises;

NOW THEREFORE,

IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is granted in its entirety and Plaintiff's Complaint as a result is dismissed with prejudice.

IT IS SO ORDERED.

ANNA DIGGS TAYLOR
U.S. DISTRICT COURT JUDGE

DEC 13 1999

APPENDIX II

FILED
FEB 22 2000
LEONARD GREEN, Clerk

No. 00-1119

UNITED STATES COURT OF APPEALS
FOR THE SIXTH COURT

TAO WANG,)
Plaintiff-Appellant,)
)
V.) ORDER
)
WILLIAM BEAUMONT HOSPITAL,)
Defendant-Appellee.)

Appellant is appealing from the order dismissing his civil action.

It appears from the documents before the court that the decision of the district court was entered December 14, 1999. The notice of appeal filed on January 14, 2000, was late. *See* Fed. R. App. 4(a) and 26(a).

It further appears from the record that appellant did not apply to the district court for an extension of time within which to file the notice of appeal late, due to excusable neglect, and it appears that no such extension of time has been granted by the district court.

It is therefore ordered that appellant show cause in writing not later than twenty-one days from the date of this order why the appeal should not be dismissed for lack of jurisdiction.

It is further ordered that the briefing schedule be held in

abeyance pending the resolution of the question of jurisdiction.

ENTERED PURSUANT OF RULE 45(a)
RULES OF THE SIXTH CIRCUIT
Leonard Green, Clerk

s/ Leonard Green

Feb. 26, 2000 NO. 00-1119

United States Court of Appeals
For the Sixth Circuit
100 East Fifth Street, Room 532
Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202-3988

Dear Misters Sievering & Green:

I have obtained the order from you and would like to present the following facts to you. The basic facts was in the first paragraph of my appeal.

"My case attorney Mr. Alan B. Posner has informed me that he was not going to represent me unless I could pay certain amount of money to cover the appeal cost. As the consequence of my discrimination by Dr. Rocher and Beaumont Hospital, my medical career was destroyed, I have had heart attack, during the angioplasty, I had a stroke. I could not find any full time job for more than two years. At age 56 with my medical conditions, I do not expect that I could find any job soon. Since I could not afford the service of an attorney, and I truly believe the truth is in my side, I am filing this **appeal** to meet the 30 days deadline." My appeal was done January 11, 2000. It was mailed out with certified mail on January 12, 2000.

After my civil action was dismissed by the District Court, I got the notice from my ex-attorney Mr. Posner, who informed me that I had the right to appeal "*At this point, you have the right to appeal to the Sixth Circuit Court of Appeals in Cincinnati. If an appeal is to be filed, it must be done within thirty days.*" (letter from Mr. Posner). In the same letter, Mr.

Posner informed me that he was not going to represent me. Since I could not afford the service of an attorney, the letter is the **only** legal source that I could follow in my appeal. Despite my medical condition, I struggled to finish the appeal documents to meet the deadline. The misunderstanding of the filing procedure lead me to file the appeal to the appeal court directly, and I never knew that there was a possibility that I could apply for an extension of filing the notice of appeal later.

The delay of the arrival of the appeal was due to my misunderstanding of filing procedure and my lack of the legal support, which was the direct consequence of the discrimination of Dr. Rocher and Beaumont hospital. My appeal should not be dismissed based on the fact that I could not afford the legal service.

Sincerely,

s/ Tao Wang
Tao Wang, M.D.

FILED
APR 10 2000
LEONARD GREEN, Clerk

No. 00-1119

UNITED STATES COURT OF APPEALS FOR THE SIXTH COURT

TAO WANG,)
Plaintiff-Appellant,)
)
V.) ORDER
)
WILLIAM BEAUMONT HOSPITAL,)
Defendant-Appellee.)

Before: MERRITT, NELSON, and DAUGHTREY, Circuit Judges.

The plaintiff-appellant, Tao Wang, has filed a petition for rehearing of this court's order of March 21, 2000 dismissing his appeal.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

The petition for rehearing is denied.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green
Clerk

FILED
MAR 21 2000
LEONARD GREEN, Clerk

No. 00-1119

UNITED STATES COURT OF APPEALS
FOR THE SIXTH COURT

TAO WANG,
Plaintiff-Appellant,

V.

WILLIAM BEAUMONT HOSPITAL,
Defendant-Appellee

ORDER

Before: MERRITT, NELSON, and DAUGHTREY, Circuit Judges.

This matter is before the court upon consideration of the appellant's response to this court's order directing him to show cause why his appeal should not be dismissed for lack of jurisdiction on the basis of a late notice of appeal. Appellant responded stating that he has medical conditions, his attorney would not continue to represent him on appeal, that he mailed his notice of appeal within the appeal period, and that he mailed the notice of appeal to this court by mistake.

It appears from the documents before the court that the district court's decision was entered December 14, 1999. The notice of appeal received in this court on January 14, 2000 should be treated as filed in the district court on that date.

See Fed. R. App. 4(d). However, it was received outside the appeal period. *See* Fed. R. App. 4(a) and 26(a).

The failure of appellant to timely file a notice of appeal deprives an appellate court of jurisdiction. Compliance with Fed. R. App. P. 4(a) is a mandatory and jurisdictional prerequisite which this court can neither waive nor extend. *Baker v. Raulie*, 879 F.2d 1396, 1398 (6th Cir. 1989) (per curiam). A notice of appeal is considered filed when it is received, not when it is mailed. *Id.*; *Torras Herreria v. M/V Timur Star*, 803 F.2d 215, 215 (6th Cir. 1986). Fed. R. App. P. 26(b) specifically provides that this court may not enlarge the time for filing a notice of appeal.

Accordingly, it is ordered that the appeal is dismissed for lack of jurisdiction.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green
Clerk

Appendix III

Rebut to Beaumont Brief.

Dr. Rocher and his companies' deposition was a combination of lying under oath, using double standards, twisting facts to fit their own purpose, and fabricating stories that had never existed. The Beaumont Brief was a concentrated version of the deposition, only they went further.

Since the brief was full of misleading statements, mistakes, and false stories that were made up, it is necessary for appellant to make things straight.

1. "... he held a multitude of research position at different places, *including five in seven years.*"
(Page 1)

The following professional experiences were copied from appellant's CV.

1985-1987	Research Fellow, Mayo Graduate School of Medicine/Mayo Clinic Rochester, Minnesota
1987-1989	Senior Research Fellow, Department of Heart & Hypertension The Cleveland Clinic Foundation Cleveland, Ohio
1989-1992	Research Instructor & Associate Scientist Heart Transplant Research Fellow

Buffalo Gen. Hospital
State University of New York
at Buffalo,
University of Wisconsin, Madison.
(Appellant followed his employer
from SUNY Buffalo to the
University of Wisconsin)

1992-1997 Research Scientist
Director
Cardiac Research Laboratories
Cardiology Division
William Beaumont Hospital
Royal Oak, Michigan

The statement in Brief was false. The defense should present how they made the calculation and what was the purpose to twist the fact.

2. "After graduation, he performed clinical research at the Beijing Railway General Hospital then served there as a resident for 11 years performing research and tending to railway employees and their families". (Page 2)

The whole story was made up without any ground. Appellant had never performed "clinical research" for several years and never "*served as a residents for 11 years, performing research . . .*"

The facts: Appellant's work in Beijing Railway General Hospital was purely patient care. In China, Railway is the main transportation nationwide. There were millions of

railway employees. Every city has its own railway hospital. The General Railway Hospital in Beijing not only took care of local patients, but also accepted the difficult cases from subordinate hospitals nationwide. The Beijing Railway General Hospital was a teaching hospital with more than 1.000 beds, and is affiliated with Beijing University Medical School.

Analysis: **There was no record, documentation, or the deposition from any witness indicating there was any truth in the story made up by the defense.** This evidence shows how ruthless the defense were.

3. "After the two-year position at Mayo ended, he was not promoted." (Page 2]

Everybody who had basic knowledge about medical research knows that fellowship is two years training. In appellant's 1985-1987 fellowship program, there were American, Japanese, South Korean, German, New Zealand, and Chinese Physicians, after the training, there were none to be "promoted to staff." What did the defense want to imply?

Appellant feels honored to have an opportunity to be trained and worked in Mayo Clinic for two years. Mayo Clinic is the real World Class institute. Appellant does not understand what the relevance of "*the promotion*" to the *"residency"* program. *Appellant does not think that too many 97 residency candidates were qualified to be a Mayo Clinic fellow*, do not even mention about "the promotion." Appellant is also proud to have been a senior fellow in The Cleveland Clinic. Still, appellant does not think that there were too many 97 residents in Beaumont internal medicine program who were qualified to be a "senior fellow" in the

Cleveland Clinic

4. "and Plaintiff then ***searched for his fifth position in seven years.***"

This is a repeated lie.

5. " Plaintiff's performance at Beaumont was less than Stellar (Goldstein 17-25) [Rocher (56,66,69).} "And it eventuated in the elimination of his position. [Rocher 56] [Goldstein 28]."

When appellant was forced to file a law suit against Beaumont, he did not expect there was anyone daring to stand up to support him. Appellant believe this is an universal phenomenon in any civil law suit against a powerful employer

Surprisingly, there were only two physicians who criticized appellant's performance in Beaumont. One was Dr. Rocher, who hardly knew anything about appellant's research. Furthermore, ***he had the major responsibility in premeditating rejection of appellant's applications to both programs (internal medicine and cardiology).***

The other was Dr. Goldstein. Dr. Goldstein always wanted to control the cardiology research lab, and always saw appellant and his project as a major obstacle. He tried very hard to force appellant to do his research for him, in his word was to "take ownership". The only thing he wanted was **"to be the last author."** It was announced in a meeting chaired by Dr. O'Neill. The conflict of interest of Dr. Goldstein should have excluded him from being a cardiology fellowship interviewer at the first place, the bizarre score that he gave to appellant in interview had revealed how untrustworthy he was.

Dr. Goldstein had a vicious personality, he was in Beaumont no more than two years (in 1997), but had already made bad reputation for himself. With limited information that appellant had; Dr. Goldstein had had a shouting match with the veterinarian in animal facility, and insulted a Polish Doctor in cardiology until she was crying. Later she complained to Dr. O'Neill about the incident. Even Dr. Bernstein stated "*I think he doesn't like me and I don't think I like him , but that's okay.*" (Dr. Bernstein's Dep P. 17).

There were several versions of why appellant's position was terminated. The version given by Dr. Rocher contradicted the official reason that was given to appellant. This fact indicated how unreliable Beaumont was.

The official reason was that cardiology did not have research funding for the lab. It was against the promise made by Dr. O'Neill before appellant came to Beaumont. It was why Dr. Rocher and Dr. O'Neill both told appellant that "The department owe you something." Both of them had promised that they would help appellant "to make a smooth transition from research to clinical work." It was why Dr. O'Neill had promised "if the residency program (of internal medicine) does not take you, I'll take you as a cardiology fellow."

Dr. O'Neill, who is the chief of Cardiology division and supervisor of appellant for five years, described appellant's work as a ***"phenomenal asset"*** to the Cardiology research, and appellant was ***"extremely hard worker, extremely dedicated"*** and "***he was very hard working and was very reliable***" (Dr. O'Neill's deposition P. 28, 63 and Ex 4).
6. "Before 1995, plaintiff intended to remain in a researcher, rather than pursue a residency, Because he didn't think it was probable." (Page 4)

It was a lie again.

Appellant always wanted to be a well-rounded physician. For reaching his goal, he came to the US to learn the medical research. Appellant prepared his USMLE since 1992. Appellant passed USMLE (Basic Sciences in 1995, and the Clinical sciences in 1996) in 1995-1996. Without passing the exams, according to the rules, *It was impossible* for appellant to apply any residency or fellowship program.

Appellant does not understand what the defense tried to say, the fact was so clearly in record. How anybody could change it.

7. "Once plaintiff decided to pursue an IMR position for the July 1997 class, he seemingly became **obsessed**." (Page 5)

Appellant was an internist then cardiologist more than ten years. Appellant had been doing cardiology (it is a major subspecialty of internal medicine) research since he came to the US. Internal Medicine was the medical Career appellant has devoted almost all of his life. Pursuing the program of internal medicine was the most natural thing to do under appellant's circumstance. **The defense insulted appellant repeatedly.** Pursuing internal medicine as a career by other applicants was considered a "big plus". It was described as "But even then this is a woman who spoke with *passion* about what she wanted to do and wrote with *passion* about what she wanted to do." (Dr. Shoichet's deposition page 85.)

8. " Finally, Plaintiff's letters of recommendation were not compelling." (Page 8)

Please compare the letters, they are there.

a. Appellant's letters were from the key physicians all around Beaumont.

b. The letters were from appellant's colleagues. They did not use the available "format" for hundred of the students. As colleagues and friends for many years, they took the matter seriously.

c. All of appellant's letter were originals, not copies.

d. Dr. Timmis (the director of the cardiology research, Beaumont) had sent two personal letters to Dr. Shoichet and Dr. Rocher. Drs. O'Neill and Timmis had called Drs. Rocher and Dr. Shoichet for several times. Drs. Bernstein (The Director of the Research institute, Beaumont) and Glover (Chief, Department of Surgery, Beaumont) had talked with Dr. Rocher and Shoichet in person expressing their support. Dr. Glover had also sent Dr. Rocher a recommendation letter. Even Dr. Wilkinson (one of Dr. Rocher's subordinate-one of three IMR decision makers) had to admit the letter was "compliment." Dr. Gorden (Chief, Gastroenterology, Beaumont) had talked with Dr. Rocher in support of appellant, it was in that meeting, Dr .Gorden had found out that Dr. Rocher and his companies "had made up their mind, they are not going to take you...".

Drs. Ritman and Hoffman were appellant's mentor and colleagues in Mayo Clinic, they are friends of appellant for more than ten years, their letters were not generated from "observation"over several months. Appellant was moved when Drs. Ritman and Hoffman insisted to sign every letter they sent out.

9. *The hierarchy of Medical Research*

Principle Investigator who is the chief of the laboratories or the research group, called the *independent investigator* (principal investigator). The principal investigator decide the research direction of the lab or the research group. The principal investigator are not involved in day to day research activities so that he could concentrate in writing grants and papers. *Appellant is the principle investigator in his own lab.*

Associate scientist or Associate Professor, the second level researcher. They direct the daily research activity of the lab or research group. Some times they are allowed to submit their own research grants.

Assistant Scientist or Assistant Professor, the third level researcher. Some time in non-academic institute such as Beaumont, Clinical fellows or residents fit in this category. They are responsible for the research project assigned to them. they are not allowed to apply the grant by themselves.

Research Assistant The fourth level personnel, in research lab. They are actually technicians doing the job in assisting the investigators.

Drs. Bayati and Stacevic did the assisting jobs as a **volunteer** in this level (the Research Assistant are formal, paid Beaumont employee). Trying to compare Drs. Bayati and Stacevic research "achievement" with appellant's and further to prove that they were more successful in medical research, *the defense must have been out of their minds.*

10. "Plaintiff did not have the qualifications necessary to compete with 3888 applicants for 17 positions." (Page 12, Beaumont Brief).

Dr. Rocher and his companies always tried to use the number

of the applications that they received to prove how competitive their program was. The fact was every internal medicine program in Detroit area had about 4,000 applications in 1997. The huge number was caused by the procedures, it did not bare any weight on whether the program was competitive or not.

Every applicant sent out applications to 100 or even more programs. As a result, every program got about 4,000 applications. Most of the applications had never made it to the table of the director, they were dismissed by a secretary with a high school diploma. Dr. Shoichet had told appellant that some of the applications had never been opened. *It is laughable to believe that there were really 3,888 applicants to compete for 17 positions.*

11. "(3) failure to receive a single offer for hundreds of positions to which he applied, preclude him from establishing that he was qualified." (Page 12, Beaumont Brief)

Appellant is well qualified and deserved a resident position in internal medicine. Appellant knew clearly that there was hardly any medical graduate could compete with his medical credential.

There are some chilling facts that foreign physicians are facing after they passed their USMLE exams:

" 'I've sent **500** applications all over the country and I'm getting nowhere,' says Dr. Boshra Almoayed, 35, who came to the United States in 1992 from Yemen. By contrast, more than 90 percent of American graduates who participate in an annual computer match for

residency jobs get one."

"After passing the exams, Dr. Hammoude spent six months 'licking stamps,' and mailing **1,200** application letters. *Medical school secretaries **hung up on** him when they heard his name or when he said he was an IMG* (International Medical Graduates). Finally, he got two responses and he paid to travel for interviews. Neither hired him."

(**"Overseas MDs struggle"**, by Patricia Anstett Detroit Free Press Medical Writer)

Appellant clearly understand how his age, his foreign trained background could be major factors against his chance in any program. Without knowing appellant, it was hard to convince a program to accept an applicant who was "older than average applicant."

However, Beaumont's discrimination of appellant based on his age and national origin could not be tolerated. Appellant had been working in Beaumont as a medical staff for five years. Everyone who had worked with him in Beaumont knew how hard he had worked to bring a storage room like lab to a full functioning cardiac research laboratory, even the amateur researcher, such as Dr. Goldstein, wanted to grab it. Many physicians who were close to appellant knew his clinical and research achievements, his maturity, and his integrity. It was why Dr. Timmis wrote:

"*It is my fervent hope that you will thoughtfully consider the worthiness of this candidate (appellant). I believe it would be a **shame** to loose him to another institution.*" (The personal letters of Dr. Timmis to Dr. Rocher and Dr. Shoichet).

It was sad to see that the bias and prejudice of a handful of physicians outdid the consciences of the majority of Beaumont physicians.

Second, during the application, appellant's position was terminated. According to the policy of Beaumont, and the promises from the head of the Department and the division, appellant should be "smoothly transferred from research to clinical work." Many institution have a written or unwritten rule that gives priority to their own employees when recruiting new residents or fellows. It was why when Dr. Rocher refused to guarantee a resident slot to appellant (A medical staff who had been working in the same Department for five years) caused severe damage to appellant's chance. Furthermore, Dr. Rocher and his companies have been blocking every possible opportunity that appellant could have had. *Without the interferences from Dr. Rocher, appellant were going to finish his three year Cardiology fellowship at present time.* ***Using the consequence of the discrimination to deny the discrimination had indicated how far the defense would go.***

12. "Bayati had spent the previous year at Beaumont working for Dr. Shoichet, during which he developed a national reputation for Dr. Shoichet."

There was no truth at all.

In the previous year, Dr. Bayati had never worked for Dr. Shoichet. He worked for Dr. Gordon in Gastroenterology as a volunteer research assistant for several months in 1996. It was hard to imagine how Dr. Bayati could develop "a national reputation" for somebody he had never worked for.

Dr. Bayati worked as a volunteer research assistant in Gastroenterology for a few months. His work was described by his supervisor *"his duty includes evaluating screening and entering patients' clinical data from research trials into the computer." (Dr. Silverman's letter).* This was exact description that appellant's technician was doing in his lab. Dr. Shoichet had really made fun of everyone, he said "phenomenal" "I had never seen anything like that *(Data Entry*?) In my entire academic career." (Dr. Shoichet's Dep P. 47 Italic was added by appellant)

It is very hard to imagine that *a volunteer research assistant*, who had no formal medical research training, got involved in medical research for improving his English and knowing American medicine (Dr. Shoichet's Dep), and whose basic task in several months research was **data entry,** could **"develop a national reputation"** not only for himself but also for Dr. Shoichet. It was an insult to American Medical Society.

13. About Dr. Stecevic " . . . and so impressed the faculty of his university that they offered him an assistant professor position."

The defense had twisted the fact again.

First, there are three tracks in the medical universities. The teaching track (assistant professor- associate professor, and professor), the research track (assistant scientist, associate scientist, and research scientist), the clinical track (house staff, staff physician-attending physician, Chief physician) etc. Dr. Stacevic was offered an assistant professor job which *indicated that he had decided to go to a teaching position.* It was confirmed by the fact that he did not get formal residency

training in Internal medicine.

Second, before appellant came to the United States, he had completed his more than three years residency training and two years cardiology fellowship and was promoted to be an attending cardiologist, that was at least equivalent to the *associate professor*. Appellant was a research instructor, which was equivalent to assistant professor, in SUNY (State University of New York) at Buffalo and an associate scientist, which was equivalent to the *associate professor*, in University of Wisconsin at Madison. Appellant had been full time *faculty member* of the Cardiology in the Department of Internal Medicine at Beaumont for five years when he applied for the resident and fellowship position.

What was the logic of the defense? *Were the academic titles from China and the US inferior to the lower title from the former Soviet Union?*

14. "Beaumont even searched for other non-physician positions throughout the hospital for him the plaintiff refused because 'he was over qualified.'"

This lie is cruel. As a consequence of the discrimination, appellant have had no chance to find any full time job (neither physician nor non-physician), he is disabled, and hardly to survive.

Beaumont had promised many times but never searched any position (physician or non-physician) for appellant and appellant had never refused any position.

The last promise made by Beaumont was a research position with the same pay to appellant before the brief hearing (in

the beginning of Nov. 1999), appellant accepted. Then Beaumont broke the promise at the end of November, 1999, as they had done many times before.

> "The defense attorney had called and apologized to me for three times" (the formal counsel of appellant).

15. In Cardiology fellowship (page 24) "in fact Plaintiff admitted that such a "special consideration is rare, and afforded only to, among other prerequisites..., **Plaintiff was disqualified by his own terms**."

The defense tried to confuse people again.

The "special consideration" was published by the *internal medicine board* about resident training. It was for the experienced foreign physicians, when the prerequisites were met, the foreign physicians could be *waived* from the residency training. Several of appellant's colleagues with the similar background and experiences are practiced and "board eligible" now under this "special consideration". *There was nothing to disqualify appellant, there was only a handful of physicians who discriminated against him.*

To get into the cardiology fellowship without residency training is totally different. Dr. Shoichet said that Dr. O'Neill called him and

> "*He asked me is it possible to appoint somebody to a fellowship who has not had a residency...The answer is yes, it is.* However, and the however was this is why people call me, because this is the rules, that I know that other people do not, that the problem with that as a career path, is at the end of the day, at the

> end of the fellowship, the applicant is left unboard eligible, because you're not Board eligible in cardiology until you're Board certified in internal medicine, and you're not Board certified in internal medicine until you do an internal medicine residency." (Dr. Shoichet's Dep)

Translated into the language that everybody can understand; yes. It is possible to do cardiology fellowship without residency training, however, something Dr. Shoichet worried was that after training, appellant may not be cardiology board eligible. How "kind and concerned" they were, in preventing this from happening (even if it really happened, at least appellant could be a general practice physician), *they decided to deny appellant's cardiology fellowship.* The defense's witnesses slapped them on their face again.

The fact that Dr. O'Neill and other cardiologist seriously consider recruiting appellant was an indication that appellant *was much more qualified than the other 97 internal medicine applicants (without the interferences of Dr. Rocher, appellant was going to finish his cardiology fellowship at present time). None of the applicants of 97 internal medicine program was qualified for the cardiology fellowship.* Actually, after the interview, Dr. Marcowitz (the director of the Cardiology fellowship program in Beaumont) considered that appellant was better than cardiology fellows then in the program (Cardiology fellowship interview record.)

16. <u>"Court Should Be Reluctant To Intervene In This Academic Context"</u>

Defendant's response to Plaintiff's First Request for Production of Documents makes it clear that Defendant's

residents are considered employees of the hospital, and not students. Residents along with other employees are supplied with an employee handbook, for example, and are expected to comply with Beaumont employment policies. Residents are paid a salary and are eligible for workers compensation. (Ex 20). As such, residents are clearly "employees" within the meaning of Title VII and the Michigan ELCRA. This case therefore arises in the context of employment, not academia. Therefore, the cases cited by Defendant suggesting that Courts should pay special deference to decisions made within the realm of academia simply do not apply here.

The key of the case was that a handful physicians against majority's opinion, discriminated appellant based on his age and national origin and retaliated him for his daring to file an internal grievance.

APPENDIX IV

First in a series: "Overseas MDs Struggle"
by Patricia Anstett Detroit Free Press

A new round of study

The IMGs who do secure student visas usually enroll in one of several programs to bone up for the tests they must pass to show that their skills are commensurate with American graduates. The tests ensure a level playing field, says Brey, the immigration lawyer. Though many medical schools abroad may equal standards at U.S. schools, some may not. Tests require a basic command of English.

Kaplan Inc. offers self-guided study courses, group lectures, immigration help and other services. The programs begin at $209 for four-day access to Kaplan resources to a deluxe, six-week program of live lectures costing $3,225.

In downtown Detroit, in a renovated wing of a bank building, dozens of foreign doctors look at anatomy illustrations and medical tests in small study cubicles. They come early and leave late, taking breaks only to eat or pray, as the Muslims students do in a room the Kaplan staff has furnished with rugs and an area for traditional pre-prayer washing.

One of the most regular students is Imad Obeid, 24. He came to metro Detroit eight months ago from Damascus, Syria, on of the top 20 of 700 in his medical school class.

"I knew the job market here was tight," he says. He wants to be a surgeon, part of "the best medical system in the world."

Obeid has quickly learned English. He lives in Troy with his brother, who already has won an internal medicine residency at Detroit's Henry Ford Hospital. He got a passing grade on his first certification test but hopes to improve in the next round, because he knows that many programs only will consider doctors with the high scores.

But passing the exams doesn't assure doctors of a job.

"I've sent 500 applications all over the country and I'm getting nowhere," says Dr. Boshra Almoayed, 35, who came to the United States in 1992 from Yemen. By contrast, more than 90 percent of American graduates who participate in an annual computer match for residency jobs get one.

Almoayed wants to serve the Arabic community as a psychiatrist. There are few female, Arabic-speaking psychiatrists, she says. She has quit her job as a substance abuse counselor at Dearborn's Arab Community Center for Economic and Social Services to apply for residencies full time. Top doctors in the field have encouraged her to go in person for interviews or to call psychiatry department heads for interviews, but no one will return her calls, she says.

Dr. Mazen Najjar, a Flint physician from Syria, also has sent hundreds of letters since he arrived in 1998, to no avail.

He supports himself and his pregnant wife by working as a pharmacist at Flint's McLaren Regional Hospital. There, he hopes to make contacts and glean medical information that will help him in his quest to be an anesthesiologist. Like most foreign-educated physicians, he would settle for a residency in primary care or another field. He works hard, tries to be patient and takes advantage of every opportunity to

learn.

He and a group of Michigan IMGs keep in touch with Hammoude, a father figure and mentor who tries to pass along tips. Hammoude currently is constructing a Web site -www.acfmg.com- to assist IMGs. He is calling the group he is creating the Arab-American Council for Foreign Medical Graduates.

Hammoude brings his personal experience to the issue. He came to the United States from Syria in 1986 with little money and almost no English. He pumped gas and worked in factories.

He spent six months "licking stamps," and mailing 1,200 application letters. Medical school secretaries hung up on him when they heard his name or when he said he was an IMG. Finally, he got two responses and he paid to travel for interviews. Neither hired him.

Then he lucked out. A friend told him about a pediatrics residency in Youngstown, Ohio, and he hit it off with the chairman of the department. The man not only hired him in 1988 but bought him a set of golf clubs.

Hammoude used them two or three times. He hasn't played for years.